IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1712 OF 2004

WITH

CIVIL APPLICATION NO.551 OF 2005

Arun Mahadev Jadhav)
10/50, Near School No.2,)
Ichalkaranji, Dist. Kolhapur)..Petitioner

Versus

1. Government of Maharashtra)
Co-operation & Textile)
Department, through its)
Secretary Textiles,Mantralaya)
Mumbai-400 032.)
2.The Director of Handlooms,)
Powerlooms and Cooperative)
Textiles, Maharashtra State,)
Nagpur.)
3.Regional Deputy Director)
of Handlooms, Powerlooms and)

Cooperative Textiles,Kolhapur)

4.National Cooperative)

Development Corporation)

4, Siri Institutional Area,)

Houze Khas, New Delhi-110 016)

5.Kolhapur District Central)

Co-operative Bank Ltd.,)

Ltd., Kolhapur.)..Respodents

6.Shri Shivneri Sahakari Bank)

Ltd., Near Shahu Statue, Main)

Road, Ichalkaranji, Dist.)

Kolhapur.)

Dr. V.K. Choudhari with Mr. Anurag Jain, Pradeep Sawant

and S.A. Kumbhakoni, for the Petitioner.

Mr. V.A. Thorat, Advocate General with Mr. N.P.

Deshpande, A.G.P. for Respondent Nos. 1 to 3.

Mr. A.Y. Sakhare, Senior Advocate i/b. Siddharth Karpe,

for the Applicant.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.

DATE : 15th March, 2005

ORAL JUDGMENT:(PER F.I. REBELLO, J.)

1. The petitioner describes himself as a citizen who

believes, that neither the Government should get cheated nor the funds of the Government should be misappropriated. It is stated that he had earlier pursued various proceedings as set out in para.1 of the petition. By the present petition the main relief as prayed for by the petitioner is as under:-

> "This Honourable Court by virtue of appropriate writ, direction or order be pleased to call for the record and proceedings relating to the recommendation of the financial assistance proposals of Powerlooms Cooperative Societies under the NCDC scheme recommended by the Government of Maharashtra and be further pleased to enquire in this matter and be further pleased to direct the Government of Maharashtra not to disburse any amount under the said scheme even though it is sanctioned by the NCDC."

2. Based on the National Textile Policy, the National Textile Development Corporation had sponsored a scheme for financial assistance for development of Powerloom Co-operative Societies from 1994-95. Pursuant to that scheme the Government of Maharashtra issued a G.R. dated 19th October, 1996 taking note of the fact that there are about 5,00,000 Powerlooms in Maharashtra constituting 40% of the Powerlooms in the country. The Government, therefore, passed a resolution that subject

to the societies satisfying the conditions they would recommend the proposal to NCDC and in turn the State of Maharashtra would stand as guarantor for the due repayment of the loan sanctioned by NCDC to the societies. The Circular thereafter came to be issued on 4th May, 1998 forwarding the various formats that had to be forwarded. A further G.R. was issued on 5th March, 1998 making certain other modifications.

. The Government of Maharashtra during the period when the G.R. was in force found that there were hardly any recoveries from the Powerloom societies to whom the loans had been advanced and in terms of the affidavit filed by Sadanand S. Sankhe in Writ Petition No.3136 of 2001 set out that out of the assistance of Rs.134.00 crores the Government could recover Rs.2.53 crores and in view of that decided to abandon the scheme and not to stand any guarantor for any other loans. In the said affidavit it is also pointed out that the proposal sent by the plane Powerlooms was out-dated technology and was not be financially feasible.

3. It appears that due to various representations by the societies which had been formed and in view of the probability of creating jobs the Government reconsidered the issue and decided to stand as guarantor in respect of 23 societies whose proposal had already been cleared by NCDC., 142 societies whose proposal had been forwarded to

NCDC and 30 other societies. In so far as the 30 other societies by a separate order passed today we in Writ Petition NO.9354 of 2004 have restrained the State of Maharashtra by an injunction from forwarding those proposal and standing as guarantor.

4. On account of the decision to re-open the scheme the petitioner has preferred the petition. Though there are various allegations in the petition of fraud and/or that the societies are bogus and/or misappropriating amounts, specific details which are required for consideration of such pleas have not been set out and as such it will not be possible to consider the said contentions. It was, however, urged on behalf of the petitioner that considering the affidavit of Sadanand S. Sankhe in Writ Petition NO.3136 of 2001 the Government ought not to have reopened the scheme as the Government is not in a position to recover the amounts which were released by the NCDC.

5. On behalf of the Respondents State Shri Kailas D. Bhandalkar, Under Secretary to Government has filed an affidavit. It is therein set out that the Government earlier had taken a policy decision at the State Cabinet Level on 22nd August, 2003 to close down the NCDC sponsored scheme for financial assistance to powerloom co-operative societies. The Government thereafter has reconsidered the issue and the State Cabinet taking into

account the impact of the decisions amongst other on powerloom Co-operative Societies whose proposals are pending with the NCDC or the Government had decided to reopen the scheme for limited purpose of giving financial assistance, to include 23 societies whose proposals had been cleared, 142 societies whose proposals were pending with the NCDC for approval from the year 2000 It is not necessary to refer to the third proposal. It is also set out that it is not the intention of the Government to continue the scheme for an indefinite period in future or to take continuous financial liabilities under the scheme and the Government has decided to close down this scheme permanently after providing assistance as set out above and to that extent the scheme has been reopened. It is also set out that the Regional Deputy Director of Handlooms, Powerlooms and Textiles has been instructed to verify the books of accounts, income and expenditure statements including the amount of the Members' share and make field visits report whilst recommending the proposal of the beneficiary society for release of the second instalment. For all these reasons it is pointed out that this Court ought not to interfere in the exercise of its extra ordinary jurisdiction.

6. By Civil Application o.551 of 2005 the Society which was affected by the status quo granted by this Court has also applied to intervene. It is pointed out that the Government by order of 28th August, 2004 in fact

had issued a direction for release of the amounts which subsequent to the order of status quo could not be released. It is pointed out that considering that the financial year is coming to an end the respondent State should be directed to release the funds at the earliest. A reply was filed to the said Civil Application. On behalf of the petitioners certain documents have been annexed which indicates that some societies are taking loans from the banks, based on the loan taken get a certificate issued to show to the Government that they are financially viable and thereafter withdraw the amount of the loan and pay it back. It is, therefore, set out that by this modus operandi many societies which are financially not good and whose proposals could not be cleared are seeking to get the benefits.

7. We have heard the learned Counsel and the various contentions raised. Considering the earlier affidavit filed by Sadanand S. Sankhe we directed the learned Advocate General as to whether the societies in respect of whom the moneys were being advanced were societies having plain looms. The learned Advocate General points out that the impugned G.R. itself is dated 26th February, 2004 and it requires that the societies have to be semi-automatic and, therefore, the Government has not in any manner gone back on the statement made before this Court. In so far as the allegations of the petitioner about the production of certificate the learned Advocate

General states that this Court could impose such conditions which can ensure that the moneys goes to the societies which have met with the requirements and the moneys are not misutilised.

8. Even though the State Government had decided as a matter of policy to close down the scheme, it is still open to the Government based on material before it to reopen the scheme. The Government in its affidavit has given reasons as to why the Scheme was being partly reopened. Considering the reasons given and considering that it is a policy matter and otherwise as there is no breach of the requirement of Article 14 of the Constitution of India except to the extent of breach of the 30 societies in respect of which we have already granted interim relief we see no reason why this Court should interfere with the policy decision taken by the Government in so far as the 23 Societies who have been cleared and 142 societies whose proposals were pending before the NCDC.

9. Considering the above, we pass the following order:-

. The Respondent State to ensure that the 142 societies' whose proposals are pending approval before the NCDC, that their finances are in order and that they have not produced certificates based on loan taken from the bank for a temporary period to show their financial

position. If on such enquiry it is found that the societies do not have necessary financial strength in terms of the policy of the Government, then in so far as those societies are concerned moneys should not be released to them until within the time frame as set out by the Government they bring in the money as required. Otherwise not to release moneys in their favour or stand as guarantor.

. With the above direction the petition is disposed of. Interim relief granted stands vacated. There shall be no order as to costs.

. In view of the above the Civil Application has become infructuous and disposed of as infructuous.

. Personal Secretary of this Court to issue authenticated copy of this order to the parties.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)